

AMENDED IN SENATE MAY 14, 2014

SENATE BILL

No. 1388

Introduced by Senators Lieu, Hill, and Mitchell
(Principal coauthor: Senator Huff)
(Coauthors: Assembly Members Cooley, Eggman, and Olsen)

February 21, 2014

An act to amend Sections 266k and 647 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1388, as amended, Lieu. Human trafficking.

Existing law provides that a person who solicits or agrees to engage in or engages in any act of prostitution is guilty of disorderly conduct, a misdemeanor, punishable by imprisonment in ~~the~~ a county jail for no more than 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment. Disorderly conduct includes, but is not limited to, soliciting or agreeing to engage in or engaging in any act of prostitution, and agreeing to engage in an act of prostitution when, with specific intent to so engage, the person manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.

This bill would instead make a person who seeks to purchase or purchases a commercial sex act guilty of a misdemeanor, punishable by imprisonment in ~~the~~ a county jail for at least 48 hours, but not more than 6 months, and by a fine of at least \$1,000, and, if probation is granted, by a fine of at least \$1,000, but not more than \$50,000, to be deposited in the Victim-Witness Assistance Fund to fund grants to local programs. The bill would also authorize the court to order a defendant

who is convicted of a violation of the above offense, involving any person who was a minor at the time of the offense, to pay an additional fine of not less than \$1,000 and not more than \$10,000. This fine would not be imposed upon a defendant who is a minor at the time of the offense. Moneys collected would be deposited into the Commercial Sexual Exploitation of Children Services Fund, which would be created in the State Treasury. These moneys would be available, upon appropriation by the Legislature, for the purpose of funding child sexual exploitation and child sexual abuse victim counseling centers and programs that fund services for child victims of human trafficking.

Existing law authorizes the court to order a person convicted of violating certain prohibitions against the prostitution of a minor to pay an additional fine not to exceed \$20,000.

This bill would require that the additional fine be not less than \$5,000.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 266k of the Penal Code is amended to
2 read:
3 266k. (a) Upon the conviction of any person for a violation
4 of Section 266h or 266i, the court may, in addition to any other
5 penalty or fine imposed, order the defendant to pay an additional
6 fine not to exceed five thousand dollars (\$5,000). In setting the
7 amount of the fine, the court shall consider any relevant factors,
8 including, but not limited to, the seriousness and gravity of the
9 offense and the circumstances of its commission, whether the
10 defendant derived any economic gain as the result of the crime,
11 and the extent to which the victim suffered losses as a result of the
12 crime. Every fine imposed and collected under this section shall
13 be deposited in the Victim-Witness Assistance Fund to be available
14 for appropriation to fund child sexual exploitation and child sexual
15 abuse victim counseling centers and prevention programs under
16 Section 13837.
17 (b) Upon the conviction of any person for a violation of Section
18 266j or 267, the court may, in addition to any other penalty or fine
19 imposed, order the defendant to pay an additional fine of not less
20 than five thousand dollars (\$5,000) and not more than twenty
21 thousand dollars (\$20,000).

1 (c) Fifty percent of the fines collected pursuant to subdivision
2 (b) and deposited in the Victim-Witness Assistance Fund pursuant
3 to subdivision (a) shall be granted to community-based
4 organizations that serve minor victims of human trafficking.

5 (d) If the court orders a fine to be imposed pursuant to this
6 section, the actual administrative cost of collecting that fine, not
7 to exceed 2 percent of the total amount paid, may be paid into the
8 general fund of the county treasury for the use and benefit of the
9 county.

10 SEC. 2. Section 647 of the Penal Code is amended to read:

11 647. Except as provided in subdivisions (k), (l), and (m), every
12 person who commits any of the following acts is guilty of
13 disorderly conduct, a misdemeanor:

14 (a) Who solicits anyone to engage in or who engages in lewd
15 or dissolute conduct in any public place or in any place open to
16 the public or exposed to public view.

17 (b) (1) Who agrees to purchase or purchases a commercial sex
18 act. A person agrees to purchase a commercial sex act if, with
19 specific intent to so purchase, he or she manifests an acceptance
20 of an offer or solicitation to purchase the act, regardless of whether
21 the offer or solicitation was made by a person who also possessed
22 the specific intent to engage in a commercial sex act. An agreement
23 to purchase a commercial sex act does not violate this paragraph
24 unless some act, in addition to the agreement, is done within this
25 state in furtherance of the commission of a commercial sex act by
26 the person who has agreed to purchase that act.

27 (2) Who agrees to perform or performs a commercial sex act.
28 A person agrees to perform a commercial sex act if, with specific
29 intent to so perform, he or she manifests an acceptance of an offer
30 or solicitation to perform the act, regardless of whether the offer
31 or solicitation was made by a person who also possessed the
32 specific intent to engage in a commercial sex act. An agreement
33 to perform a commercial sex act does not violate this paragraph
34 unless some act, in addition to the agreement, is done within this
35 state in furtherance of the commission of a commercial sex act by
36 the person who has agreed to perform that act.

37 (3) For purposes of this subdivision, “commercial sex act” means
38 any lewd act between persons for money or other consideration.

1 (c) Who accosts other persons in any public place or in any
2 place open to the public for the purpose of begging or soliciting
3 alms.

4 (d) Who loiters in or about any toilet open to the public for the
5 purpose of engaging in or soliciting any lewd or lascivious or any
6 unlawful act.

7 (e) Who lodges in any building, structure, vehicle, or place,
8 whether public or private, without the permission of the owner or
9 person entitled to the possession or in control of it.

10 (f) Who is found in any public place under the influence of
11 intoxicating liquor, any drug, controlled substance, toluene, or any
12 combination of any intoxicating liquor, drug, controlled substance,
13 or toluene, in a condition that he or she is unable to exercise care
14 for his or her own safety or the safety of others, or by reason of
15 his or her being under the influence of intoxicating liquor, any
16 drug, controlled substance, toluene, or any combination of any
17 intoxicating liquor, drug, or toluene, interferes with or obstructs
18 or prevents the free use of any street, sidewalk, or other public
19 way.

20 (g) When a person has violated subdivision (f), a peace officer,
21 if he or she is reasonably able to do so, shall place the person, or
22 cause him or her to be placed, in civil protective custody. The
23 person shall be taken to a facility, designated pursuant to Section
24 5170 of the Welfare and Institutions Code, for the 72-hour
25 treatment and evaluation of inebriates. A peace officer may place
26 a person in civil protective custody with that kind and degree of
27 force that would be lawful were he or she effecting an arrest for a
28 misdemeanor without a warrant. A person who has been placed
29 in civil protective custody shall not thereafter be subject to any
30 criminal prosecution or juvenile court proceeding based on the
31 facts giving rise to this placement. This subdivision shall not apply
32 to the following persons:

33 (1) Any person who is under the influence of any drug, or under
34 the combined influence of intoxicating liquor and any drug.

35 (2) Any person who a peace officer has probable cause to believe
36 has committed any felony, or who has committed any misdemeanor
37 in addition to subdivision (f).

38 (3) Any person who a peace officer in good faith believes will
39 attempt escape or will be unreasonably difficult for medical
40 personnel to control.

1 (h) Who loiters, prowls, or wanders upon the private property
2 of another, at any time, without visible or lawful business with the
3 owner or occupant. As used in this subdivision, “loiter” means to
4 delay or linger without a lawful purpose for being on the property
5 and for the purpose of committing a crime as opportunity may be
6 discovered.

7 (i) Who, while loitering, prowling, or wandering upon the private
8 property of another, at any time, peeks in the door or window of
9 any inhabited building or structure, without visible or lawful
10 business with the owner or occupant.

11 (j) (1) Any person who looks through a hole or opening, into,
12 or otherwise views, by means of any instrumentality, including,
13 but not limited to, a periscope, telescope, binoculars, camera,
14 motion picture camera, camcorder, or mobile ~~phone~~, *telephone*,
15 the interior of a bedroom, bathroom, changing room, fitting room,
16 dressing room, or tanning booth, or the interior of any other area
17 in which the occupant has a reasonable expectation of privacy,
18 with the intent to invade the privacy of a person or persons inside.
19 This subdivision shall not apply to those areas of a private business
20 used to count currency or other negotiable instruments.

21 (2) Any person who uses a concealed camcorder, motion picture
22 camera, or photographic camera of any type, to secretly videotape,
23 film, photograph, or record by electronic means, another,
24 identifiable person under or through the clothing being worn by
25 that other person, for the purpose of viewing the body of, or the
26 undergarments worn by, that other person, without the consent or
27 knowledge of that other person, with the intent to arouse, appeal
28 to, or gratify the lust, passions, or sexual desires of that person and
29 invade the privacy of that other person, under circumstances in
30 which the other person has a reasonable expectation of privacy.

31 (3) (A) Any person who uses a concealed camcorder, motion
32 picture camera, or photographic camera of any type, to secretly
33 videotape, film, photograph, or record by electronic means, another,
34 identifiable person who may be in a state of full or partial undress,
35 for the purpose of viewing the body of, or the undergarments worn
36 by, that other person, without the consent or knowledge of that
37 other person, in the interior of a bedroom, bathroom, changing
38 room, fitting room, dressing room, or tanning booth, or the interior
39 of any other area in which that other person has a reasonable

1 expectation of privacy, with the intent to invade the privacy of that
2 other person.

3 (B) Neither of the following is a defense to the crime specified
4 in this paragraph:

5 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
6 employer, employee, or business partner or associate of the victim,
7 or an agent of any of these.

8 (ii) The victim was not in a state of full or partial undress.

9 (4) (A) Any person who photographs or records by any means
10 the image of the intimate body part or parts of another identifiable
11 person, under circumstances where the parties agree or understand
12 that the image shall remain private, and the person subsequently
13 distributes the image taken, with the intent to cause serious
14 emotional distress, and the depicted person suffers serious
15 emotional distress.

16 (B) As used in this paragraph, intimate body part means any
17 portion of the genitals, and in the case of a female, also includes
18 any portion of the breasts below the top of the areola, that is either
19 uncovered or visible through less than fully opaque clothing.

20 (C) Nothing in this subdivision precludes punishment under
21 any section of law providing for greater punishment.

22 (k) (1) (A) A person convicted of a violation of paragraph (1)
23 of subdivision (b) is guilty of a misdemeanor punishable by
24 imprisonment in ~~the~~ a county jail for not less than 48 hours of
25 continuous confinement, nor more than six months, and by a fine
26 of one thousand dollars (\$1,000). In all cases in which probation
27 is granted, the court shall require as a condition thereof that the
28 person be confined in a county jail for at least 48 hours of
29 continuous confinement and pay a fine of at least one thousand
30 dollars (\$1,000), but not more than fifty thousand dollars (\$50,000).
31 A court shall not waive the requirement that a person who violates
32 paragraph (1) of subdivision (b) shall be confined for at least 48
33 continuous hours in a county jail.

34 (B) Each fine imposed and collected pursuant to this paragraph
35 shall be deposited in the Victim-Witness Assistance Fund to fund
36 grants to local programs. Fifty percent of the fines collected and
37 deposited shall be granted to public agencies and nonprofit
38 corporations that provide exit or recovery programs for individuals
39 exploited through commercial sex. Fifty percent of the fines
40 collected and deposited shall be granted to law enforcement and

1 prosecution agencies in the jurisdiction in which the charges were
2 filed to fund programs to prevent sex purchasing.

3 (2) (A) In any accusatory pleading charging a violation of
4 subdivision (b), if the defendant has been once previously convicted
5 of a violation of that subdivision, the previous conviction shall be
6 charged in the accusatory pleading. If the previous conviction is
7 found to be true by the jury, upon a jury trial, or by the court, upon
8 a court trial, or is admitted by the defendant, the defendant shall
9 be imprisoned in a county jail for a period of not less than 45 days
10 and shall not be eligible for release upon completion of sentence,
11 on probation, on parole, on work furlough or work release, or on
12 any other basis until he or she has served a period of not less than
13 45 days in a county jail. In all cases in which probation is granted,
14 the court shall require as a condition thereof that the person be
15 confined in a county jail for at least 45 days. In no event does the
16 court have the power to absolve a person who violates this
17 subparagraph from the obligation of spending at least 45 days in
18 confinement in a county jail.

19 (B) In any accusatory pleading charging a violation of
20 subdivision (b), if the defendant has been previously convicted
21 two or more times of a violation of that subdivision, each of these
22 previous convictions shall be charged in the accusatory pleading.
23 If two or more of these previous convictions are found to be true
24 by the jury, upon a jury trial, or by the court, upon a court trial, or
25 are admitted by the defendant, the defendant shall be imprisoned
26 in a county jail for a period of not less than 90 days and shall not
27 be eligible for release upon completion of sentence, on probation,
28 on parole, on work furlough or work release, or on any other basis
29 until he or she has served a period of not less than 90 days in a
30 county jail. In all cases in which probation is granted, the court
31 shall require as a condition thereof that the person be confined in
32 a county jail for at least 90 days. In no event does the court have
33 the power to absolve a person who violates this subparagraph from
34 the obligation of spending at least 90 days in confinement in a
35 county jail.

36 (3) In addition to any punishment prescribed by this section, a
37 court may suspend, for not more than 30 days, the privilege of the
38 person to operate a motor vehicle pursuant to Section 13201.5 of
39 the Vehicle Code for any violation of subdivision (b) that was
40 committed within 1,000 feet of a private residence and with the

1 use of a vehicle. In lieu of the suspension, the court may order a
2 person's privilege to operate a motor vehicle restricted, for not
3 more than six months, to necessary travel to and from the person's
4 place of employment or education. If driving a motor vehicle is
5 necessary to perform the duties of the person's employment, the
6 court may also allow the person to drive in that person's scope of
7 employment.

8 (l) (1) A second or subsequent violation of subdivision (j) is
9 punishable by imprisonment in a county jail not exceeding one
10 year, or by a fine not exceeding two thousand dollars (\$2,000), or
11 by both that fine and imprisonment.

12 (2) If the victim of a violation of subdivision (j) was a minor at
13 the time of the offense, the violation is punishable by imprisonment
14 in a county jail not exceeding one year, or by a fine not exceeding
15 two thousand dollars (\$2,000), or by both that fine and
16 imprisonment.

17 (m) (1) The court may order a defendant who is convicted of
18 a violation of subdivision (b) involving any person who was a
19 minor at the time of the offense, to pay, in addition to any other
20 penalty or fine imposed, a fine of not less than one thousand dollars
21 (\$1,000) and not more than ten thousand dollars (\$10,000). This
22 subdivision does not apply to a defendant who was a minor at the
23 time of the offense.

24 (2) Moneys collected pursuant to this subdivision shall be
25 deposited in the Commercial Sexual Exploitation of Children
26 Services Fund, which is hereby created in the State Treasury, to
27 be administered by ~~_____~~ *the Office of Emergency Services*.
28 Moneys deposited in this fund are available, upon appropriation
29 by the Legislature, to fund child sexual exploitation and child
30 sexual abuse victim counseling centers as described in Section
31 13837 and programs that fund services for child victims of human
32 trafficking as defined in Section 236.1 in the county in which the
33 fine was collected.

34 (3) If the court orders a fine to be imposed pursuant to this
35 subdivision, the actual administrative costs of collecting that fine,
36 not to exceed 2 percent of the total amount paid, may be paid into
37 the general fund of the county treasury for the use and benefit of
38 the county.

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